United Nations ST/IC/2017/33

Secretariat

13 October 2017

Information circular*

To: Members of the staff

From: The Under-Secretary-General for Management

Subject: **Practice of the Secretary-General in disciplinary matters and cases of criminal behaviour, 1 July 2016 to 30 June 2017**

1. The purpose of the present circular[1] is to continue to inform staff members of the practice of the Secretary-General in exercising his authority in disciplinary matters under article X of the Staff Regulations of the United Nations, and to implement paragraph 17 of resolution 59/287, in which the General Assembly requested the Secretary-General to ensure that all staff of the Organization were informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard for the protection of the privacy of the staff members concerned. Reference is also made to section 6.6 of the Secretary-General's bulletin on the prohibition of discrimination, harassment, including sexual harassment, and abuse of authority (ST/SGB/2008/5), and the requirement to provide information regarding disciplinary cases involving prohibited conduct as defined in that bulletin. The present circular covers the period from 1 July 2016 to 30 June 2017.

2. A broad overview of the administrative machinery in disciplinary matters is provided in section I below. Section II contains a summary of the cases in which one or more disciplinary measures were imposed by the Secretary-General on Secretariat staff members during the reporting period. Section III provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

* The present circular is in effect until further notice.

[1] Previous circulars covering the period from January 2000 to June 2016 were issued as ST/IC/2002/25, ST/IC/2004/28, ST/IC/2005/51, ST/IC/2006/48, ST/IC/2007/47, ST/IC/2008/41, ST/IC/2009/30, ST/IC/2010/26, ST/IC/2011/20, ST/IC/2012/19, ST/IC/2013/29, ST/IC/2014/26, ST/IC/2015/22 and ST/IC/2016/26.

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I. Overview of the administrative machinery with respect to disciplinary matters

A. Legislative framework governing the conduct of staff members

3. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity".

4. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values (see, in particular, staff regulation 1.2 and staff rule 1.2).

B. Misconduct

5. Staff regulation 10.1 (a) provides that "the Secretary-General may impose disciplinary measures on staff members who engage in misconduct". Staff rule 10.1 (a) provides that the "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances or to observe the standards of conduct expected of an international civil servant may amount to misconduct and may lead to the institution of a disciplinary process and the imposition of disciplinary measures for misconduct". Additionally, staff rule 10.1 (c) provides that "the decision to launch an investigation into allegations of misconduct, to institute a disciplinary process and to impose a disciplinary measure shall be within the discretionary authority of the Secretary-General or officials with delegated authority". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. The administrative instruction on revised disciplinary measures and procedures (ST/AI/371 and Amend.1)[2] provides further examples of conduct for which disciplinary measures may be imposed.

6. A new administrative instruction on investigations and the disciplinary process was discussed at the annual meeting of the Staff-Management Committee, held in April 2016, and sent for broader consultation in June 2016. It remains under internal review at this time.

C. Procedural fairness

7. Where the heads of offices or other responsible officers believe, following an investigation, that misconduct may have occurred, they refer the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case. Depending on the subject matter and the complexity of the report of misconduct, the investigation may have been undertaken by the heads of offices or their designees, or by the Office of Internal Oversight Services, at its own initiative or at the request of heads of offices.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter and thereby initiates the disciplinary process, staff members are

[2] See also ST/SGB/2008/5.

notified in writing of the allegations of misconduct and are informed of their opportunity to comment on the allegations and of the right to seek the assistance of counsel in their defence through the Office of Staff Legal Assistance or from outside counsel at their own expense. They are given a reasonable opportunity to respond to the allegations of misconduct. In the light of the comments provided by the staff members and on the basis of the entire dossier, the Assistant Secretary-General decides whether to close the case, with or without administrative action, or to recommend the imposition of one or more disciplinary measures. In the latter case, the Under-Secretary-General for Management decides whether to impose one or more of the disciplinary measures provided for in staff rule 10.2 (a). In some cases, the first step taken with respect to a matter referred to the Office of Human Resources Management is not to initiate the disciplinary process, but rather to request the staff members to provide comments. The request for comments is made in compliance with staff rule 10.2 (c) if the issuance of a reprimand is being contemplated and to assist the Office in deciding whether to initiate the disciplinary process.

9. Staff rule 10.4 (a) provides that, at any time after a report of possible misconduct, pending an investigation until the completion of the disciplinary process, staff members may be placed on administrative leave by the appropriate official.[3]

10. In accordance with staff rule 10.3 (c), staff members against whom a disciplinary measure has been imposed may submit an application to the Dispute Tribunal challenging the imposition of the measure in accordance with chapter XI of the Staff Rules. Judgments of the Dispute and Appeals Tribunals relating to disciplinary cases can be found on the website of the Office of Administration of Justice (www.un.org/en/oaj).

D. Disciplinary measures

11. Staff rule 10.2 (a) provides that disciplinary measures may take one or more of the following forms (i.e., more than one measure may be imposed in each case):

(a) Written censure;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for salary increment;

(d) Suspension without pay for a specified period;

(e) Fine;

(f) Deferment, for a specified period, of eligibility for consideration for promotion;

(g) Demotion, with deferment, for a specified period, of eligibility for consideration for promotion;

(h) Separation from service, with notice or compensation in lieu of notice, and with or without termination indemnity;

(i) Dismissal.

[3] In January 2013, the Assistant Secretary-General for Human Resources Management delegated to the Under-Secretary-General for Field Support, on a pilot basis, the authority to place field mission staff members on administrative leave with pay. The delegation of authority on a pilot basis was reconfirmed in September 2014. Guidelines for placement of staff on administrative leave with pay pending investigation and under the disciplinary process can be found in the Human Resources Handbook (https://hr.un.org/handbook), under the category "Administration of justice and disciplinary matters".

12. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and mitigating circumstances. Additionally, in accordance with staff rule 10.3 (b), disciplinary measures imposed must be proportionate to the nature and the gravity of the misconduct involved. Given the thoroughness of the review involved to assess the unique facts and features of each case, the specific sanction that applies to a specific type of misconduct cannot be determined in advance or applied across the board.

E. Other measures

13. Written or oral reprimands, the recovery of moneys owed to the Organization and administrative leave with or without pay are not considered disciplinary measures. Reprimands are administrative measures that are important for upholding standards of proper conduct and promoting accountability. Warnings or letters of caution are managerial measures directed at fostering awareness of the proper standards of conduct. In addition, where conduct that may amount to misconduct has an impact on performance, the issue may be addressed in the context of performance management. That may include training, counselling, the non-renewal of a contract or the termination of an appointment.

II. Summary of cases in which disciplinary measures were imposed during the period from 1 July 2016 to 30 June 2017

14. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure or measures imposed by the Secretary-General. The functional title of the staff members or other particulars relating thereto are provided only when they played a role in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

15. As noted above, both aggravating and mitigating circumstances may be taken into account in determining a sanction, and these vary according to the unique facts and circumstances of a case. Examples of possible aggravating circumstances are the repetition of acts of misconduct, the intent to derive personal benefit and the degree of harm resulting from the misconduct. Examples of possible mitigating circumstances are sincere remorse and the voluntary disclosure of the acts of misconduct early in the process.

16. Not every case brought to the attention of the Secretary-General indicating possible misconduct results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is insufficient evidence to pursue a matter as a disciplinary case, or when staff members provide a satisfactory explanation in response to the formal allegations of misconduct, the case is closed. Cases will also typically be closed when staff members retire or otherwise separate from the Organization before an investigation or the disciplinary process is concluded, unless continuation is in the interest of the Organization. In the vast majority of cases involving former staff members, a record is made and placed in the official status file so that the matter can be further considered if and when the staff members rejoin the Organization. In that regard, section 3.9 of the administrative instruction on the administration of fixed-term appointments (ST/AI/2013/1) provides that former staff members will be ineligible for re-employment following resignation during an investigation of misconduct or institution of a disciplinary process, unless they agree to cooperate with an ongoing investigation or disciplinary process until its conclusion. Where relevant, that provision is noted in records placed in official status files.

A. Abuse of authority, harassment and discrimination

17. A staff member sexually harassed an individual, who had worked for an entity external to the Organization and then joined a United Nations agency, by making unwanted advances, sending improper messages of a sexual nature and continuing to attempt to contact the individual. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

18. A staff member, without authorization, obtained the key and gained entry to the residence occupied by a staff member of another United Nations agency.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

19. A staff member repeatedly and inappropriately touched the body of another staff member who was working in a subordinate position in the office of the former.

Disposition: a fine of one month's net base salary and separation from service, with compensation in lieu of notice and without termination indemnity.

20. A staff member performed a sexual act at the workplace in the presence of employees of a contractor, and in a second instance, performed a sexual act in public view. Mitigating factors included the staff member's long service in mission settings.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

B. Theft and misappropriation

21. Without authorization or reasonable justification, a staff member entered an office in which money was stored through its window, searched and/or attempted to open drawers inside the office and ignored repeated requests from security staff members to open the office door.

Disposition: dismissal.

22. A staff member took goods from a United Nations commissary without paying for them.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

23. A staff member ordered and received goods using documentation and stamps of the Organization, without authorization to do so, for personal gain. The vast majority of the goods were recovered from a property of the staff member.

Disposition: dismissal.

24. A staff member attempted to sell property (two laptops) of the Organization without authorization.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

25. A staff member took money from the wallet of a United Nations contractor, without the knowledge or consent of the contractor. Mitigating factors included the staff member's long service and early admission.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

26. A staff member took, without authorization, ceremonial beehives belonging to the Organization. The staff member's long, satisfactory service with the Organization and personal circumstances operated as mitigating factors. The beehives were recovered.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

27. A staff member took, without authorization, fuel belonging to the Organization and sold it to third parties. That the staff member served as a driver was considered an aggravating factor. The staff member's early admission operated as a mitigating factor.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. The disposition also specified financial recovery of the loss to the Organization.

28. A staff member removed a generator belonging to the Organization from United Nations premises without authorization using a United Nations vehicle. There were mitigating and aggravating circumstances.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

C. Misrepresentation and false certification

29. A staff member submitted a birth certificate containing false information in support of an application for dependency benefits.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

30. A staff member submitted three claims for reimbursement for medical expenses to the health insurance scheme provided by the Organization. The claims were supported by falsified medical invoices and documentation. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. The disposition also specified financial recovery of the loss to the Organization.

31. A staff member submitted two claims for reimbursement for medical expenses to the health insurance scheme provided by the Organization. The claims were supported by falsified medical invoices and documentation. Mitigating factors included the staff member's long service to the Organization.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. The disposition also specified financial recovery of the loss to the Organization.

32. A staff member submitted two claims for reimbursement for medical expenses to the health insurance scheme provided by the Organization. The claims were supported by falsified medical invoices and documentation. The staff member was not reimbursed in relation to those claims. There were mitigating factors.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

33. A staff member submitted two claims for reimbursement for medical expenses to the health insurance scheme provided by the Organization. The claims were supported by falsified medical invoices and documentation. The staff member was not reimbursed in relation to those claims. There were no mitigating or aggravating circumstances.

Disposition: dismissal.

34. A staff member submitted a claim for reimbursement for medical expenses to the health insurance scheme provided by the Organization. The claims were supported by falsified medical invoices and documentation. The Organization suffered a financial loss as a result of the staff member's actions. There were no mitigating or aggravating circumstances.

Disposition: dismissal. The disposition also specified financial recovery of the loss to the Organization.

35. A staff member submitted a claim for reimbursement for medical expenses to the health insurance scheme provided by the Organization. The claims were supported by falsified medical invoices and documentation. The staff member was not reimbursed in relation to those claims. There were no mitigating or aggravating circumstances.

Disposition: dismissal.

36. A staff member submitted to the Organization 43 falsified sick leave certificates and at least 8 claims for reimbursement for medical expenses that included falsified invoices and medical documentation. The Organization suffered a financial loss as a result of the staff member's actions. There were aggravating and mitigating factors.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity, together with a fine of one month's net base salary. The disposition also specified financial recovery of the loss to the Organization.

37. A staff member made a false declaration on the staff member's personal history profile falsely claiming to have worked at a specified security company. That the staff member colluded with other persons to falsify documentation submitted to the Organization regarding previous employment was considered an aggravating factor, and that the staff member admitted wrongdoing and showed sincere remorse was considered a mitigating factor.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

38. A staff member submitted to the Organization several dependency benefits questionnaires that did not truthfully reflect the staff member's marital status. There were mitigating circumstances.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity. The disposition also specified financial recovery of the loss to the Organization.

39. A staff member submitted to the Organization several dependency benefits questionnaires that did not truthfully reflect the staff member's marital status.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. The disposition also specified financial recovery of the loss to the Organization.

40. A staff member submitted dental insurance claims that contained false information. There were mitigating factors, including an early admission to the misconduct.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. The disposition also specified financial recovery of the loss to the Organization.

D. Inappropriate or disruptive behaviour

41. A staff member used insulting and racially charged language towards a non-United Nations person while using a United Nations vehicle.

Disposition: written censure.

42. A staff member refused to comply with the instruction to report for training aimed at addressing performance issues. The staff member's status as a Security Officer acted as an aggravating factor.

Disposition: written censure.

43. A staff member engaged in disruptive behaviour at a local bar and, after having consumed alcohol, drove a United Nations vehicle in a manner that was dangerous to the public and without reasonable care, and failed to stop when instructed to do so by Security Officers. Mitigating factors included the staff member's early admission. That the staff member served as a Security Officer and had received a previous sanction for disorderly conduct operated as aggravating factors.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

E. Unauthorized outside activities and conflict of interest

44. Without the approval of the Secretary-General, a staff member engaged in outside activities by editing and reviewing documents for a private consulting firm managed by another staff member and failed to report the other staff member's possible misconduct. There were mitigating circumstances.

Disposition: loss of two steps in grade, together with a written censure.

45. A staff member who was employed by a national Government prior to joining the United Nations remained so employed for more than three years after joining.

Disposition: written censure, loss of one step in grade and a fine equivalent to three months' net base salary.

46. A staff member provided translation/interpretation services for one or more non-United Nations organizations on one or more occasions while employed by the United Nations and without the authorization of the Secretary-General.

Disposition: written censure, loss of two steps in grade and a fine equivalent to three months' net base salary.

47. A staff member conducted business and participated, without authorization, in the affairs of an outside entity that had a contractual relationship with the Organization, and failed to disclose the staff member's relationship with the outside entity while participating in the decision-making process to issue a contract to the outside entity.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

F. Assault and abusive conduct

48. A staff member with security functions made an aggressive physical gesture during an argument with a supervisor, having previously been disciplined for using excessive force during a security response to an incident.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

49. A staff member attempted to strike another staff member during a physical altercation that followed a verbal dispute. The conduct was mitigated by the fact that the other staff member had initiated the physical altercation.

Disposition: demotion of one grade with deferment, for three years, of eligibility for consideration for promotion.

50. A staff member attempted to strike another staff member during a physical altercation that followed a verbal dispute. The conduct was aggravated by the fact that the staff member had previously engaged in a physical altercation at work.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

51. A staff member published information about staff members who had not participated in a series of staff protests. The conduct was mitigated by the fact that the staff member deleted the information the same day and published a retraction the following day.

Disposition: written censure and loss of two steps in grade.

52. A staff member physically assaulted the staff member's domestic partner and threatened the partner and a colleague by pointing the staff member's service firearm at them.

Disposition: dismissal.

53. A staff member physically assaulted another staff member. That the staff member had been provoked was considered a mitigating factor.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

54. A staff member verbally abused, threatened and physically assaulted other staff members.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

55. A staff member, who was a Security Officer, slapped an employee of a contractor providing security services to the Organization. The staff member had a supervisory role over the contractor. There were mitigating factors.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

G. Failure to honour private obligatioas

56. A staff member obtained a loan from one or more staff members of the Organization and delayed in repaying and/or did not fully repay the amount borrowed.

Disposition: written censure and loss of three steps in grade. The staff member was also directed to repay the amount borrowed in full.

57. A staff member failed to abide by instructions that had been issued on behalf of the Secretary-General in connection with a previously sanctioned outstanding private legal obligation. There were aggravating factors.

Disposition: demotion of one grade with deferment, for two years, of eligibility for consideration for promotion.

H. Sexual exploitation and abuse

58. A staff member engaged in the sexual exploitation and abuse of a minor.

Disposttion: dismissal.

59. A staff member engaged in sexual relations with a beneficiary of United Nations assistance and paid the beneficiary in connection with those relations. Mitigating factors included the staff member's early admission to the facts underlying the misconduct.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity, together with a fine equivalent to one month's net base salary.

I. Misuse of United Nations property and assets

60. A staff member failed to return to the Organization the unused portion of a cash advance. The staff member's length of service to the Organization was found to constitute a mitigating factor.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity. The loss was also to be recovered.

61. A staff member failed to properly report an accident that occurred while the staff member was driving a United Nations vehicle.

Disposition: written censure, loss of one step in grade and a fine equivalent to one month's net base salary. The disposition also specified financial recovery of the loss to the Organization.

62. A staff member drove a United Nations vehicle while under the influence of alcohol. There were mitigating circumstances, including long service.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

63. A staff member used a United Nations vehicle for personal gain. The staff member's early admission was considered a mitigating factor. That the staff member had derived financial benefit from the misuse of the vehicle operated as an aggravating factor.

Disposition: written censure, together with a loss of three steps in grade, with deferment, for a period of one year, of eligibility for salary increment, and a fine of one month's net base salary.

J. Misuse of office

64. A staff member with human resources functions solicited payment from a United Nations job applicant in connection with the latter's recruitment.

Disposition: dismissal.

65. A staff member offered to assist a person external to the Organization with securing United Nations employment and accepted payments from the latter. The staff member's early admission constituted a mitigating factor.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity, and a fine of one month's net base salary.

66. A staff member improperly used a position with the Organization for financial gain and solicited and/or accepted payments from one or more contractors with the Organization.

Disposition: separation from service, with compensation in lieu of notice and without termination indemnity.

K. Other

67. A staff member failed to report another staff member's breaching of staff rules and regulations despite having knowledge thereof.

Disposition: written censure.

68. A staff member in a position subordinate to another staff member assisted the latter in cheating on two written assessments in the course of official recruitment exercises. That the staff member had derived no personal benefit was considered a mitigating factor.

Disposition: demotion by one grade with deferment, for two years, of eligibility for consideration for promotion.

69. A senior staff member cheated on two written assessments in the course of official recruitment exercises and solicited the assistance of another staff member to do so. That the staff member served at the management level, with oversight responsibilities over matters that included human resources, was considered an aggravating factor. The staff member's long service and prompt admission constituted mitigating factors.

Disposition: separation from service, with compensation in lieu of notice and with termination indemnity.

70. A staff member performing security supervisory functions instructed team members not to report possible misconduct by another team member and failed to report the possible misconduct to a more senior staff member.

Disposition: deferment, for a period of two years, of eligibility for consideration for promotion, together with written censure.

71. A staff member was found to have created misleading documentation regarding the staff member's employment with the Organization. The staff member's early admission constituted a mitigating factor.

Disposition: written censure.

III. Possible criminal behaviour

72. In its resolution 59/287, the General Assembly requested the Secretary-General to take action expeditiously in cases of proven misconduct and/or criminal behaviour and to inform Member States about the actions taken. During the reporting period, 24 cases involving credible allegations of criminal conduct by United Nations officials or experts on mission were referred to Member States.